

Message Text

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PAGE 01 NAIROB 10737 201127Z
ACTION AF-10

INFO OCT-01 IO-13 ISO-00 HA-05 CIAE-00 INR-10 NSAE-00
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C O N F I D E N T I A L NAIROBI 10737

E. O. 11652: GDS
TAGS: SHUM, KE
SUBJECT: DETENTION OF NGUGI WA THIONG'O

REF: (A) NAIROBI 0759 AND PREVIOUS,
(B) 75 NAIROBI A-27,
(C) 76 NAIROBI A-21,
(D) NAIROBI 1131
(E) STATE 179432

1. EMBASSY KNOWS OF NO RPT NO PLANS BY KENYAN AUTHORITIES
TO BRING NGUGI TO TRIAL. AS IS KNOWN, NGUGI DETAINED
UNDER PUBLIC SECURITY ACT WHICH DOES NOT REQUIRE TRIAL.
THE GOVERNMENT IS OBLIGATED TO SERVE NOTICE OF THE DETENTION
WITHIN 14 DAYS AND GOK OFFICIALLY GAZETTED NGUGI'S DETENTION
IN JANUARY 13 GAZETTE. ACCORDING TO PUBLIC SECURITY ACT,
DETAINEE MUST BE INFORMED OF REASONS FOR DETENTION WITHIN
FIVE DAYS OF ARREST, BUT THERE NO REQUIREMENT TO PUBLICLY
CHARGE HIM BEFORE COURT. DETAINEE HAS RIGHT OF REVIEW OF HIS
CASE EVERY SIX MONTHS, BUT THIS REVIEW IS BY SPECIAL
TRIBUNAL APPOINTED BY PRESIDENT THAT MEETS IN CAMERA AND
WHOSE RECOMMENDATIONS ARE NOT BINDING ON PRESIDENT.
UNDER PROVISIONS OF SECURITY ACT, KENYAN COURTS CANNOT
QUESTION THE NECESSITY OF THE DETENTION ITSELF, ALTHOUGH
THEY CAN ASSURE COMPLIANCE WITH CERTAIN PROCEDURAL RIGHTS
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AS STATED ABOVE.

2. ALTHOUGH IT APPEARS MOOT QUESTION, EMBASSY WOULD PLAN
TO SEND REP TO TRIAL SHOULD NGUGI BE BROUGHT BEFORE COURT.

3. DEPARTMENT SHOULD CONSULT ARTICLE 83 OF KENYAN CON-
STITUTION AND ABOVE REFERENCES FOR BACKGROUND ON PUBLIC

SECURITY ACT. WITHOUT BENEFIT OF EXPERT LEGAL ADVICE, IT APPEARS TO EMBASSY THAT NGUGI DETENTION UNDER PUBLIC SECURITY ACT HAS BEEN HANDLED IN ACCORDANCE WITH CLAUSES OF ARTICLE 83 OF CONSTITUTION. HABEAS CORPUS, WHILE GENERALLY RECOGNIZED BY KENYAN JUDICIAL SYSTEM, DOES NOT APPLY UNDER PUBLIC SECURITY ACT AS REGARDS RIGHT TO APPEAR BEFORE COURT FOR PUBLIC CHARGING. IT IMPOSSIBLE TO ESTIMATE LENGTH OF NGUGI'S DETENTION, BUT IT SEEMS THIS WOULD BE PURELY POLITICAL RATHER THAN LEGAL DECISION. IT SHOULD BE REMEMBERED THAT NGUGI WAS DETAINED ON EXPRESS ORDER FROM PRESIDENT KENYATTA UPON ALLEGED RECOMMENDATION OF ATTORNEY GENERAL.

4. NGUGI DETENTION HAS NOT BECOME POLITICAL ISSUE HERE, ALTHOUGH THERE HAVE BEEN SOME RUMBLINGS AT UNIVERSITY AND A DEEPENING FEELING OF FRUSTRATION AMONG INTELLECTUALS OVER THE FAILURE OF THE UNIVERSITY AUTHORITIES EVEN TO RAISE THE ISSUE OF NGUGI'S DETENTION PUBLICLY.

5. AS WE HAVE REPORTED IN PAST, KENYA'S HUMAN RIGHTS RECORD IS GOOD, ALTHOUGH NOT PERFECT. AS DEPARTMENT WELL AWARE, ATTORNEY GENERAL CHARLES NJONJO IS CONSERVATIVE, AUTHORITATIAN AND STRONG ADVOCATE OF LAW AND ORDER. ON SEVERAL OCCASIONS BEFORE PARLIAMENT HE HAS DEFENDED USE OF PUBLIC SECURITY ACT AS NECESSARY TO DEAL WITH WHAT HE TERMS "SUBVERSIVES". HE HAS ALSO BEEN OUTSPOKEN CRITIC OF CONFIDENTIAL

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AMNESTY INTERNATIONAL AND OTHER INQUIRIES ABOUT POLITICAL DETENTIONS IN KENYA, CHARGING THESE CONSTITUTE INADMISSIBLE INTEREFERENCE IN COUNTRY'S INTERNAL AFFAIRS.

6. THE EMBASSY'S FIRST CONTACT WITH THE GOK ON THE NGUGI CASE CAME ON JANUARY 5, WHEN DEM DISCUSSED SITUATION WITH THE THEN FOREIGN MINISTRY UNDER SECRETARY FOR US AND UN AFFAIRS, SHITEMI, POINTING OUT THAT NGUGI DETENTION WOULD VERY PROBABLY PRODUCE ADVERSE PUBLIC REACTION IN US. ON JANARY 14 POLOFFS DISCUSSED CASE WITH DEPUTY PUBLIC PROSECUTOR SHARAD RAU WITH EXPECTATION THAT THEIR REMARKS WOULD REACH EARS OF ATTORNEY GENERAL NJONJO. I RAISED THE NGUGI CASE WITH THE PERMANENT SECRETARY IN FOREIGN MINISTRY SHORTLY BEFORE VISIT OF HIGH-LEVEL KENYAN DELEGATION TO US IN MARHC BUT RECEIVED NO MEANINGFUL RESPONSE. ALTHOUGH WE HAVE NOT MAINTAINED SYSTEMATIC CONTACT WITH KENYANS ON NGUGI CASE, WE HAVE, ON MORE GENERAL LEVEL, RAISED OUR CONCERNS OVER HUMAN RIGHTS WITH NUMEROUS SENIOR KENYAN OFFICIALS. FRANKLY, WE DOUBT THAT RAISING THE NGUGI AFFAIR FURTHER WITH THE GOK WOULD ACHIEVE ANYTHING FOR NGUGI.

7. UPON RECEIPT OF AMNESTY INTERNATIONAL LETTER, WE WILL

FORWARD ANY OTHER COMMENTS WE MIGHT HAVE.

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